

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6131 OF 2003

Satish Namdeo Awghade,)
Adult, Occ: Assistant Teacher)
in Matoshri Sakhubai Kanya)
Prashala, Pandharpur, Dist.)
Solapur. ...)... Petitioner.

Versus

- 1) The Education Officer)
(Secondary), Zilla Parishad,)
Solapur.)
- 2) Shri Sant Gadge Maharaj)
Mission, having its)
Registered Office at 6,)
Vidyarthi Bhuvan, Tribhuvan)
Road, Mumbai - 400 004,)
through its Chairman.)
- 3) The Head Mistress, Matoshri)
Sakhubai Kanya Prashala,)
Pandharpur, Dist. Solapur.)
- 4) The State of Maharashtra.)
- 5) Umesh Gopalrao Kadu,)
R/o. Sri Sant Sakharam)

Maharaj Sanstha, Chandrabhaga)
Ghat, Pandharpur, Dist. Solapur).... Respondents.

Mr. S. G. Kudle for the Petitioner.

Mr. C.R. Sonawane, AGP for Respondent Nos.1 & 4.

Mr. Vijay Patil for Respondent Nos.2 & 3.

Mr. A.M. Joshi for Respondent No.5.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 18TH APRIL, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

By this petition, the Petitioner herein has put forth claim for recovery of salary allegedly due and payable from 14th June, 1999, till date of the petition excluding two months - March and April, 2000. He seeks direction to Respondent Nos.1 to 3 for release of his salary due withheld by them.

2. Briefly stated, case of the Petitioner is that he was appointed as an Assistant Teacher in Respondent No.3 - School as per recommendation of Respondent No.2 - Management in a vacant post, vide appointment order dated 5th March, 1999. There was a backlog of

reserved vacancy and as such he was appointed on the post in the D.Ed. Scale w.e.f. 14th June, 1999 since he is a member of Scheduled Caste. Initially, his appointment was approved by the Education Officer - Respondent No.1 and, therefore, Respondent No.3 submitted a supplementary pay bill for release of his salary for the period between 14th June, 1999 to 29th February, 2000. The supplementary pay bill was not honoured. His salary is withheld without any substantial reason. He was prevented from signing the muster roll. He filed proceedings in the School Tribunal for redressal of his grievances. His Appeal No.66 of 2000 before the School Tribunal was withdrawn by him as a result of settlement between him and Respondent Nos.1 to 3. He is entitled to recovery of salary due in as much as his appointment is on the post for which grant-in-aid scheme is applicable. Though he made representations for release of his salary, yet the same have not been favourably considered. Hence, the writ petition.

3. By filing their reply affidavits, the Respondent No.1 and Respondent No.3 have resisted the petition. They denied that the Petitioner was appointed as an Assistant Teacher and particularly that his

appointment was approved. They contended that the Petitioner is not a qualified teacher since his educational qualifications are B.A. and B.P.Ed. He does not have requisite qualification of B.Ed. necessary for appointment as Assistant Teacher. It is denied that the Petitioner was given appointment letter filed by him by the then President of the School. It is averred that the Petitioner was appointed as a part time Librarian. However, Respondent No.1 vide letter dated 29th October, 1999 refused to grant approval for such appointment because the Petitioner is not qualified to be appointed as Librarian. The Petitioner had brought pressure on the then Education Officer through organisation of backward class employees and got approval from the Education Officer on 31st December, 1999 under duress. The mistake was subsequently rectified by order dated 5th July, 2000 passed by Respondent No.1 whereby the said approval was cancelled. It is averred that the Petitioner had pressurised the Incharge Principal / Head Mistress to submit wrong pay bill by filing false complaints under the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The Respondent No.2 informed the Respondent No.1 to dishonour the pay bill since it was wrongly submitted.

It is denied that the salary dues of the Petitioner are withheld. It is contended that the Petitioner is not at all entitled to claim any salary due in as much as he was not appointed as Assistant Teacher. It is further submitted by the contesting Respondents that one Umesh Gopalrao Kadu was appointed as Shikshan Sevak w.e.f. 16th September, 2002 and his services were terminated as directed by Respondent No.1 but the Grievance Committee has decided an appeal in his favour wherein claim of the Petitioner is decided against him. It is contended that the Petitioner has suppressed material facts and has set up false claim. Consequently, the Respondents sought dismissal of the petition.

3. We have heard learned Counsel appearing for the parties. We have gone through the copies of relevant documents which are filed on record. It may be mentioned here that at the stage of admission of the petition, an objection was raised by Respondent Nos.2 and 3 regarding maintainability of the petition. It is not the case that the writ petition is admitted and at the stage of final hearing the question of maintainability is being raised. The Division Bench of this Court by an order dated 22nd November, 2004

gave following direction:

"The question of maintainability of the writ petition raised by respondent Nos.2 and 3 in the reply affidavit is kept open for consideration at the time of hearing of the writ petition."

Needless to say, the question regarding maintainability of the petition is kept open and will have to be determined.

4. The Petitioner could have filed a civil suit for recovery of salary dues. He had the option to move the One Member Grievance Committee for entertaining complaints of Shikshan Sevaks. In fact, order dated 6th June, 2003 of the One Member Grievance Committee (Exh.5 - pg62) reveals that the President of the One Member Grievance Committee gave direction to the Education Department not to give approval to the appointment of the present Petitioner. In the face of it, the Respondent No.1 could not have given approval to the appointment of the Petitioner. Copy of order passed by One Member Grievance Committee (pg.63-Exh.5) would show that contention of rival candidate, by name, Umesh Gopalrao Kadu was accepted by the

Committee and that of the Petitioner was rejected. The Petitioner was party to the said proceedings bearing Appeal No. 7 of 2003 before the One Member Grievance Committee. The Petitioner has not challenged the said order dated 7th October, 2003 in any manner. Nay, he has not referred to such disputed claim of said Umesh Kadu in the petition. The petition is filed on 12th August, 2003 i.e. after the interim order (Exh.5- pg.62) came to be passed by One Member Grievance Committee. Obviously, the Petitioner could have gathered knowledge about the rival claims set up by the said Umesh Kadu. In spite of such knowledge, he joined said Umesh Kadu as Respondent No.5 after effecting amendment on 7th September, 2004.

5. It is explicit that the Petitioner suppressed the fact regarding the claim of Respondent No.5 - Umesh Kadu and the direction of the One Member Grievance Committee at the time of filing of the Petition. The Petitioner has come out with the case that his salary dues are withheld on account of inaction on the part of Respondent Nos.1 to 3. It is difficult to appreciate that the Petitioner was unaware about the reasons for non-payment of the salary to him. In other words, the Petitioner has suppressed certain

material facts and has not come to the Court with clean hands. It is well settled that such a petition, in which material facts are suppressed, is liable to be dismissed. The Petitioner is not entitled, therefore, to invoke discretionary jurisdiction of this Court under Article 226 of the Constitution of India due to his conduct of concealing the material facts.

6. Learned Counsel, Shri Kudale, contended that the appointment of the Petitioner ought to have been continued in as much as the approval letter was received by the Education Officer (Exh.B - Pg.10) for appointment w.e.f. 14th June, 1999 till probationary period. He invited our attention to the letter dated 5th March, 1999 purportedly written by the President of the Educational Institution. He argued that subsequent withholding of the Petitioner's pay is quite illegal, arbitrary and improper. Reply affidavit of Smt. Nirmala Sawant, Head Mistress of the School, reveals that the Petitioner is not qualified for appointment as Assistant Teacher since he is B.A., B.P.Ed. and has not acquired qualification as B.Ed. / D.Ed. The reply affidavit also shows that the letter annexed by the Petitioner

at Exhibit "A" has not been issued by the then President of the School. The facts regarding appointment of the Petitioner as Assistant Teacher and the approval for such appointment are seriously disputed by the contesting Respondents.

7. We may mention here that the contesting Respondents have filed copies of relevant appointment letter and other documents to show that the Petitioner was initially appointed from 1st July, 1999 till 30th April, 2000 as part time Librarian. It appears that his such appointment was also not subsequently approved by the Education Officer. We have noticed that disputed questions of fact are involved in the present matter. Whether the Petitioner was appointed as an Assistant Teacher is itself a disputed question of fact. Whether the Petitioner was initially appointed as Part Time Librarian is also a disputed question of fact. Whether the appointment of the Petitioner received approval of the Education Officer is also a disputed question of fact. Whether the Petitioner can be legally appointed as Assistant Teacher when he is not a trained teacher for absence of D.Ed. / B.Ed. qualification is also a disputed question of fact. The reply affidavit filed by Smt.

Nirmala Sawant would show that the Petitioner obtained approval of the Education Officer on 31st December, 1999 under duress, with the help of organisation of employees belonging to backward class and hence mistake occurred in making payment of his salary for couple of months. Whether the Petitioner filed false complaints against the Education Officer and exercised pressure tactics is also a disputed question of fact. Needless to say, all these questions of fact cannot be determined without recording of evidence.

8. We are of the view that writ jurisdiction available under Article 226 of the Constitution of India cannot be invoked when disputed questions of fact are raised and require determination through adjudicatory process. We are fortified in our view by the view taken in **Orissa Agro Industries Corporation Ltd. and Others v/s Bharati Industries and Others**, (2005) 12 SCC 725, wherein the Supreme Court observed :

"In a catena of cases this Court has held that where the dispute revolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution. [See

State Bank of India v. State Bank of India Canteen Employees' Union and Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) v. Sukamani Das.]

In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See *G. M. Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad and Rourkela Shramik Sangh v. Steel Authority of India Ltd.*)

9. In view of foregoing discussion, we are of the opinion that the present writ petition cannot be entertained and will have to be dismissed.

10. The matter does not stop here. The Petitioner has failed to avail efficacious alternative remedy of filing suit. In case of **Raja Bahadur Motilal & another vs. State of Maharashtra & others**, 2003 (1) Bom.C.R. 251, this Court has observed :

"Judicial notice also must be taken of the facts

that large number of cases are filed where civil suit is only remedy solely with a view to avoid the payment of Court fees. To take a concrete illustration, a writ petition is filed in the High Court seeking a direction to the Respondent which invariably include a private educational institution and educational authority which directs the payment, the direction sought for is, it is the duty of the State to pay and therefore writ is maintainable. It is obvious that if it is the duty of the State to pay the payment, can be recovered by filing a civil suit. A civil suit for such recovery of money will be decided in a span of 2 or 3 years whereas the Petitions for that relief are pending in this Court since 1992. No relief of any kind is received by the litigant. To carry further the illustration in such a Petition claiming arrears of salary, it may be presumed that the salary arrears for the period of three years are approximately one lakh rupee. A civil suit will require a payment of Court fees to the tune of Rs.3000/- or so. Attempt is made to deny the revenue to the State by filing a Writ Petition with Court fee of Rs.250/-. Apart from denial of revenue to the

State, in our opinion, exercise of Writ jurisdiction in such cases is lending, active assistance to the litigants to override the provisions of statute which require Court fee for adjudication of the cases. Exercise of Writ jurisdiction cannot be invoked therefore in cases where the consequences of loss of revenue, the loss of time, circumvention of law is involved."

11. Time and again the Supreme Court has held that when alternative efficacious remedy is available then jurisdiction under Article 226 of the Constitution should not be invoked. In case of **Hindustan Steel Works Construction Ltd. and another v/s Hindustan Steel Works Construction Ltd. Employees Union**, (2005) 6 SCC 725, the Supreme Court observed :

"In a catena of decision it has been held that a writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

In *U. P. State Bridge Corpn. Ltd. v. U. P. Rajya Setu Nigam S. Karamchari Sangh*, it was

held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, *Rajasthan SRTC v. Krishna Kant*, *Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad* and in *Scooters India v. Vijai E.V.Eldred*."

Similarly in case of **U. P. State Spinning Co. Ltd. v/s R. S. Pandey and another**, (2005) 8 SCC 264, it is held that writ petition under Article 226 of the Constitution should not be entertained when alternate remedy is available to the Petitioner.

12. To conclude, we are of the opinion that conduct of the Petitioner is not bonafide. He has suppressed material facts and there are several disputed questions of fact involved in the matter. The

Petitioner should have approached the civil court or other forum, as may be available under the law, for redressal of his alleged claim for recovery of salary due to him. The writ petition is not maintainable for all these reasons discussed hereinabove. Hence, the petition fails and as such is dismissed. Rule discharged. No order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)